UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ASIAN AMERICANS ADVANCING JUSTICE-ATLANTA, *et al.*, Plaintiffs, v. BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State, *et al.*, Defendants.	Civil Case No. 1:21-CV-01333-JPB

PLAINTIFFS' RESPONSE IN OPPOSITION TO INTERVENORS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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I. INTRODUCTION

In enacting Senate Bill 202, the Georgia General Assembly intentionally sought to curb the rights of certain racial groups of Georgian voters, including Asian American and Pacific Islanders ("AAPIs"). Aware of the high degree to which AAPI voters rely on absentee-by-mail voting and the assistance of non-profit organizations such as Plaintiff Asian Americans Advancing Justice–Atlanta, the legislature jammed through a bill that violates the rights of AAPIs under the U.S. Constitution and the Voting Rights Act of 1965.

Intervenor-Defendants Republican National Committee, National Republican Senatorial Committee, Georgia Republican Party, Inc., and the National Republican Congressional Committee (collectively, "the RNC") move to dismiss Plaintiffs' well-pleaded claims by proffering unsupported legal standards and ignoring precedent. The RNC advances three grounds for dismissal, each of which is unavailing.

First, the RNC misclassifies Plaintiffs' constitutional undue burden challenge as one that doesn't implicate the right to vote at all, because it involves challenges to restrictions on absentee-by-mail voting. The RNC's effort to categorically exempt restrictions on absentee voting from judicial review finds no support in applicable

law. To follow the RNC's argument to its logical conclusion, states could enact ***any*** restriction to absentee voting with total impunity—no matter how discriminatory.

Next, the RNC ignores longstanding Supreme Court precedents in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992), and instead urges this Court to apply a novel legal framework to dismiss Plaintiffs' constitutional claims. This Court should decline the RNC's invitation to adopt dicta from a non-precedential concurrence and instead follow the Supreme Court's controlling decisions. Under the framework of *Anderson-Burdick*, Plaintiffs have satisfied their burden at this stage by specifically alleging the unconstitutional restrictions SB 202 imposes on their rights.

Finally, the RNC's motion relies heavily upon the recent Supreme Court decision of *Brnovich v. Democratic National Committee.*, 141 S. Ct. 2321 (2021) for dismissal of Plaintiffs' discriminatory impact and discriminatory purpose claims. But the Court's holdings in *Brnovich* were based on its review of a full post-trial factual record. Here, the RNC invites reversible error by asking the Court to resolve factual disputes in its favor at the pleading stage based on nothing more than its assertions. Plaintiffs have adequately pleaded their claims and, at this stage of the case, the Court should not weigh evidence regarding burdens or purported state interests. This Court should deny the RNC's motion to dismiss in its entirety.

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*; *see also Norfolk S. Ry. Co. v. Geodis Logistics, LLC*, C.A. No. 1:19-CV-03341-JPB, 2020 WL 4938665, at *1 (N.D. Ga. June 18, 2020) (court "accept[s] the allegations in the complaint as true and constru[es] them in the light most favorable to the plaintiff").

Under Federal Rule of Civil Procedure 8(a), "the complaint need only give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245, 1260 (11th Cir. 2015). According to this "simplified standard for pleading, a court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.*

III. ARGUMENT

A. Plaintiffs sufficiently allege that SB 202 directly infringes upon their constitutionally-protected right to vote. (Counts II and III)

The Supreme Court emphasized in *McDonald* that "while the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, we have held that once the States grant the franchise, they must not do so in a discriminatory manner. More importantly, however, we have held that because of the overriding importance of voting rights, classifications which might invade or restrain them must be closely scrutinized and carefully confined where those rights are asserted under the Equal Protection Clause." *McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802, 807 (1969) (cleaned up).

These foundational democratic principles that *McDonald* reiterated are implicated here. At issue in this suit is not whether Georgia voters have a right to vote absentee, but rather how—through SB 202—the Georgia legislature has deliberately infringed upon the fundamental rights of a specific racial group of voters to exercise the right to vote. One way in which SB 202 violates the Constitution is the intentional restriction of absentee voting provisions to limit the suffrage of voters of color, including AAPI voters.

The RNC's argument ignores the Court's reasoning in *McDonald* to argue that Plaintiffs cannot raise a voting rights challenge that involves voting absentee-by-mail. But the Supreme Court has never held—either in *McDonald* or elsewhere—that challenges to absentee voting provisions are per se invalid. On the contrary, courts have repeatedly considered such challenges and weighed the evidence to determine whether a plaintiff is entitled to the relief sought. *See, e.g.*, *Gallagher v. N.Y. State Bd. of Elections*, 477 F. Supp. 3d 19, 43 (S.D.N.Y. 2020) (observing that courts do not consider whether a voting rights statute is unconstitutional "in the abstract, but rather whether it is unconstitutional as applied ***under the circumstances of this case***") (emphasis added). For example, in *Gallagher*, the court granted a preliminary injunction where plaintiffs challenged the state legislature's modification of an existing law requiring that absentee ballots be postmarked on or before Election Day to be counted. *Id.* The court determined that the newly-imposed postmark requirement was overly burdensome, and further determined with respect to the plaintiffs' Equal Protection Claim that the requirement "created a voting process where the state 'by later arbitrary and disparate treatment, value[s] one person's vote over that of another.'" *Id.* at 46. *See also Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77 (2d Cir. 2005) (upholding the district court's grant of a preliminary injunction with respect to a challenge to absentee ballots). Along these

lines, courts have also enjoined states from rejecting mail-in ballots due to a signature mismatch. *See, e.g.*, *Self Advoc. Sols. N.D. v. Jaeger*, No. 3:20-CV-00071, 2020 WL 6576304, at *1 (D.N.D. Aug. 28, 2020) (granting permanent injunction).

The RNC's argument that *McDonald* supports dismissal is meritless; the Supreme Court's decision is easily distinguished from the facts here. *McDonald* was decided in 1969, when absentee ballots were less widely available than they are today, and addressed Illinois's then-limited absentee ballot procedures—which had recently extended the provision of absentee ballots to a narrow class of voters.[1] The plaintiffs in *McDonald*—a group of pretrial detainees who were not among the groups of voters eligible to receive absentee ballots—challenged the statute as violative of the Equal Protection Clause. In short, they sought to be included among the newly added eligible groups to receive absentee ballots under the statute. It was in that specific context that the Court dismissed the plaintiffs' claims, noting that the plaintiffs were not excluded on the basis of wealth or race, and finding that they were reasonably treated differently. *McDonald*, 394 U.S. at 807.

[1] In total, the statute provided that absentee ballots be made available to four groups: "(1) those who are absent from the county of their residence for any reason whatever; (2) those who are 'physically incapacitated,' so long as they present an affidavit to that effect from a licensed physician; (3) those whose observance of a religious holiday precludes attendance at the polls; and (4) those who are serving as poll watchers in precincts other than their own on election day." *McDonald*, 394 U.S. at 803–04.

In contrast to *McDonald* and its progeny on which the RNC relies, Plaintiffs here do not challenge the state's provision of absentee ballots to some voters deemed eligible and not others as violative of the Fourteenth Amendment. Instead, Plaintiffs contend—consistent with *McDonald*—that Georgia has unlawfully imposed "conditions under which the right of suffrage may be exercised . . . in a discriminatory manner . . . [a]nd a careful examination [by the Court] is especially warranted where lines are drawn on the basis of wealth or race[.]" *Id.* (internal citations omitted). Namely, through SB 202, Georgia infringes upon the rights of a certain racial group of voters: AAPIs.[2] Knowing full well the rates at which AAPI voters and other voters of color rely on absentee voting, the state legislature deliberately limited voters' pre-existing access to absentee voting with the intention of disenfranchising the racial groups that rely on it the most. *See, e.g.*, First Amended Compl., ECF No. 27 ("FAC") ¶¶ 73–81 (outlining SB 202's legislative history). In other words, per the very language upon which the RNC relies in its motion, the "state's actions make it harder to cast a ballot"—meaning that the right to vote is

[2] The remainder of the cases cited by the RNC are similarly inapposite because they involve challenges to the extension of absentee voting to some groups and not others, including incarcerated plaintiffs. *See Mays v. LaRose*, 951 F.3d 775 (6th Cir. 2020) (considering the rights of detainees to vote absentee where the statute applies only to unexpectedly hospitalized prospective voters); *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 403 (5th Cir. 2020) (considering a statute like the one in *McDonald* that also gives "only some of its citizens the option to vote by mail").

necessarily at stake. *Tully v. Okeson*, 977 F.3d 608, 611 (7th Cir. 2020); Intervenors' Br. ISO Mot. to Dismiss, ECF No. 54-1 ("MTD") 4.

The RNC's description of the Eleventh Circuit's decision in *New Georgia Project v. Raffensperger*, 976 F.3d 1278 (11th Cir. 2020) is similarly misleading. There, the court determined—with the benefit of a preliminary injunction hearing—that "***the evidence shows*** that Georgia's Election Day deadline does not implicate the right to vote." *New Ga. Project*, 976 F.3d at 1281 (emphasis added). The Eleventh Circuit did ***not*** hold, as the RNC wrongly suggests, that challenges to the Election Day deadline fail to implicate the right to vote as a matter of law. Instead, the court carefully weighed the evidence, including the burden to voters of the Election Day deadline given an assessment of the entire absentee voting process, and determined that in that specific instance, the deadline did not impede Georgians' right to vote.

In sum, to proceed along the lines the RNC suggests would mean that states could impose any and all restrictions to absentee voting, and voters would have no constitutional recourse to challenge those restrictions. That is not the law. Plaintiffs should be afforded the opportunity to prove their claims—and this Court is entitled to consider them—with the benefit of a full evidentiary record.

Accordingly, because Plaintiffs properly challenge SB 202's unlawful restriction of AAPI voters' constitutionally-granted right to vote, the Court should disregard the RNC's first argument for dismissal.

B. The *Anderson-Burdick* framework, not a categorical approach, applies to Plaintiffs' constitutional undue burden claims. (Count III)

The RNC's second argument fares no better. Relying on a non-precedential concurrence in *Crawford*, the RNC tries to convince this court to follow a new legal framework, unmoored from binding precedent. *See* MTD 5–6 (citing *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 208 (2008) (Scalia, J., concurring in judgment). Namely, the RNC urges this Court to analyze Plaintiffs' undue burden claims through a categorical lens that ignores the impact of the law on the very racial group whose rights have been targeted and limited by the Georgia legislature.

But the novel categorical approach that the RNC advances is not the law; *Anderson-Burdick* is. Courts, including in the Eleventh Circuit, have applied the *Anderson-Burdick* balancing test time and time again to evaluate constitutional challenges to voting laws. *See Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1261 (11th Cir. 2020) ("[W]e must evaluate laws that burden voting rights using the approach of *Anderson* and *Burdick* . . . "); *New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1293 (N.D. Ga. 2020) ("Where, as here, a plaintiff alleges that a state has burdened voting rights through the disparate treatment of voters, the court

reviews the claim under the *Anderson-Burdick* flexible standard.”). For example, in *Common Cause/Georgia, League of Women Voters of Georgia, Inc. v. Billups*, the court applied the “*Burdick* sliding scale standard” to determine whether Georgia’s 2006 Photo ID Act violated the Equal Protection Clause. 439 F. Supp. 2d 1294, 1345 (N.D. Ga. 2006). In granting the plaintiffs’ request for a preliminary injunction, the court analyzed the Act’s impact on a specific group of voters, observing that “[t]he evidence in the record demonstrates that many voters who lack an acceptable Photo ID for in-person voting are elderly, infirm, or poor, and lack reliable transportation to a county registrar’s office. For those voters, requiring them to obtain a Voter ID card in the short period of time before the July 18, 2006, primary elections and the corresponding primary run-off elections is unduly burdensome.” *Id.*

Under *Anderson-Burdick*’s flexible framework, courts “first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments,” “identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule,” and then “determine the legitimacy and strength of each of those interests” and “consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Anderson*, 460 U.S. at 789. “[T]he rigorousness of [a court’s] inquiry into the propriety of a

state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434.

Where the right to vote is "subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance." *Id.*; *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). *See also Gallagher*, 477 F. Supp. 3d at 43 (applying strict scrutiny to plaintiffs' voting rights challenges). But even seemingly slight restrictions may be unlawful; for "[h]owever slight that burden may appear . . . it ***must*** be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford*, 553 U.S. at 191 (emphasis added). Significantly, the Supreme Court has never held that courts should apply a categorical approach that renders the impact of a voting rights statute on racial groups "legally irrelevant," *see* MTD 6; to do so would be antithetical to the balancing test the Supreme Court has articulated.[3]

[3] The RNC's citation to *Clingman v. Beaver* is misplaced because that case did not involve an Equal Protection challenge at all but, rather, a political party's challenge to Oklahoma's semiclosed primary election system. 544 U.S. 581, 593 (2005). The same is true for *Storer v. Brown*—another case that did not involve an Equal Protection challenge. 415 U.S. 724 (1974). While *Greater Birmingham Ministries v. Secretary of State for Alabama* did consider an Equal Protection claim, the Circuit's reference to Justice Scalia's concurrence in *Crawford* related to "whether racially discriminatory intent existed," and not whether it was appropriate to categorically disregard the impact of a law on specific racial groups in analyzing a constitutional challenge. 992 F.3d 1299, 1327 (11th Cir. 2021). Finally, the controlling Court of Appeals decision that the RNC cites did not involve Equal Protection claims on the

Practically speaking, *Anderson-Burdick*'s fact-dependent analysis—which pivots back and forth to weigh the restrictions imposed on voters and a state's purported justifications—means that these cases are not easily resolved at the pleadings stage. Consequently, cases routinely proceed to a preliminary injunction hearing or a motion for summary judgment before the court determines whether the Plaintiffs are entitled to the relief they seek under the *Anderson-Burdick* framework. *See, e.g.*, *Black Voters Matter Fund v. Raffensperger*, 478 F. Supp. 3d 1278 (N.D. Ga. 2020) (considering the plaintiffs' request for a preliminary injunction); *League of Women Voters of Fla., Inc., v. Detzner*, 314 F. Supp. 3d 1205 (N.D. Fla. 2018) (granting preliminary injunction).

Plaintiffs have more than satisfied their burden to state a claim at this stage and pleaded, in detail, how the SB 202 severely and unlawfully limits Plaintiffs' voting rights through, inter alia, restricting timeframes to request and receive absentee ballots; erecting barriers to accessing secure ballot drop boxes; prohibiting government officials' proactive mailing of ballot applications; imposing additional and burdensome identification requirements; and criminalizing certain assistance in

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basis of race. *See, e.g.*, *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 236 (5th Cir. 2020).

returning completed ballot applications. *See* FAC ¶¶ 82–117. That is all that is required at this stage. *See Iqbal*, 556 U.S. at 678.

C. Plaintiffs' discriminatory results and discriminatory purpose claims pass muster under *Brnovich*.

The RNC here ignores the procedural posture of *Brnovich* and misrepresents its holdings. It asks this Court to rule, as a matter of law, that Plaintiffs' Section 2 results claim fails—without ***any*** discovery or factual record to assess that claim. *Brnovich* offers no foothold for the RNC's position.

As described further below, while the *Brnovich* Court upheld two challenged provisions of Arizona election law as not producing racially discriminatory results in violation of Section 2, it explicitly endorsed the long-standing approach of adjudicating Section 2 discriminatory results claims through a fact-intensive "totality of the circumstances" inquiry. Moreover, the Court confirmed that Section 2 and Fifteenth Amendment discriminatory purpose claims are properly evaluated under the standard set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). In reaching its holdings, the *Brnovich* Court relied on a full post-trial factual record—reinforcing that Plaintiffs' claims must be permitted to proceed to discovery.

1. Discriminatory Results (Count I)

The *Brnovich* Court held that two Arizona election rules—one that mandates

That voters vote in their assigned precincts on Election Day, and another that imposes criminal penalties when unauthorized individuals collect absentee ballots—do not violate Section 2's discriminatory results prohibition. *Brnovich*, 141 S.Ct. at 2330. To reach these conclusions, the Court relied on a full factual record, weighing extensive evidence related to the burden on voters of color, the disparities in the burden on those voters as compared to other voters, the percentage of impacted ballots, overall ease of voting in Arizona, and other factors relevant to the totality of circumstances analysis, as required by Section 2. *Id.* at 2344–48.

The RNC's motion repeatedly mischaracterizes the *Brnovich* opinion as having ruled as a matter of law on various issues. Not so. To reach its conclusions, the *Brnovich* Court parsed the trial record and weighed evidence. *Brnovich* confirmed "that §2 applies to a broad range of voting rules, practices, and procedures; that an 'abridgement' of the right to vote under §2 does not require outright denial of the right; that §2 does not demand proof of discriminatory purpose; and that a 'facially neutral' law or practice may violate that provision." *Id.* at 2341.

While offering five non-exhaustive "guideposts" to assist courts in the factual "totality of the circumstances" inquiry, the *Brnovich* Court clarified that "any circumstance that has a logical bearing on whether voting is 'equally open' and affords 'equal opportunity' may be considered." *Id.* at 2338. Indeed, the *Brnovich*

Court expressly declined to announce a test to govern all Section 2 claims involving rules governing the time, place, or manner for casting ballots. *Id.* at 2336.

At this pleading stage, Plaintiffs have adequately alleged discriminatory results and discriminatory purpose claims, and adjudication of those claims must await development of the evidentiary record. None of the RNC's arguments for dismissal under *Brnovich* have merit.

First, the RNC asserts that all the challenged provisions of SB 202 "impose nothing beyond the 'usual burdens of voting.'" MTD 10. The nature and size of the burdens alleged by Plaintiff, however, are disputed questions of fact that cannot be resolved at the pleadings stage. *See Brnovich*, 141 S. Ct. at 2344 (evaluating totality of circumstances, including nature and size of burden, on post-trial record); *Crawford*, 553 U.S. at 198 (reviewing summary judgment record to determine whether challenged law "represent[ed] a significant increase over the usual burdens of voting"). At this stage, Plaintiffs have plausibly alleged significant burdens of SB 202's provisions. *See, e.g.*, FAC ¶¶ 86–90, 100, 104–106, 110–111, 114–116. The Court cannot, without further factual development, resolve the parties' dispute over whether SB 202's challenged restrictions amount to "[m]ere inconvenience[s]" or burdens that violate the VRA. *See Brnovich*, 141 S. Ct. at 2338.

Second, the RNC appears to argue that any restrictions on absentee voting restrictions are immune from challenge, because absentee voting was not the primary form of voting in 1982. MTD 11. *Brnovich* does not support this interpretation. The *Brnovich* Court merely stated that courts must take into account, among other circumstances, the extent to which a challenged regulation of time, place, or manner of voting "has a long pedigree or is in widespread use in the United States." *Brnovich*, 141 S. Ct. at 2339. Plaintiffs will adduce such evidence through discovery in this matter. The Court expressly declined "to decide whether adherence to, or a return to, a 1982 framework is necessarily lawful under § 2." *Id.* Accordingly, there is no justification to foreclose Plaintiffs' claims on the basis that they challenge restrictions relating to absentee voting.

Third, the RNC is unsatisfied with the complaint's quantification of racially disparate impacts. MTD 11–12. But Plaintiffs have sufficiently alleged, based on available statistical analysis, that AAPIs will suffer a disproportionate impact from the challenged provisions. *See, e.g.*, FAC ¶¶ 52, 87–90. Discovery, including expert discovery, will enable Plaintiffs to further quantify the magnitude of racially disparate impacts resulting from the challenged SB 202 provisions. While disputing Plaintiffs' statistical allegations, the RNC repeatedly misrepresents the procedural posture of *Brnovich*, asserting that the Supreme Court addressed the sufficiency of

complaint allegations regarding disparate impact. MTD 11–12. But, in actuality, *Brnovich* reviewed ***post-trial findings*** regarding disparate impact, including assessments of statistical evidence and witness testimony. *Brnovich*, 141 S. Ct. at 2346. The *Brnovich* Court specifically noted that "more concrete evidence" might have allowed a conclusion that the challenged law resulted "in less opportunity" for minority groups "to participate in the political process." *Id.* at 2347. Plaintiffs must be allowed to proceed to discovery to adduce facts and expert opinion regarding disparate impact of SB 202's restrictions on AAPIs.

Fourth, the impact of SB 202's challenged provisions within Georgia's "entire system of voting" is a disputed factual issue, and the evidentiary record must be developed before this Court resolves it. *Brnovich*, 141 S. Ct. at 2339. The RNC asserts that voting is easy in Georgia, citing one Internet report on election access. MTD 12. But with few exceptions that are inapplicable here, this Court is "generally limited to reviewing what is within the four corners of the complaint on a motion to dismiss." *Bickley v. Caremark RX, Inc.*, 461 F.3d 1325, 1329, n.7 (11th Cir. 2006). It would be inappropriate—and, indeed, reversible error—for this Court to disregard Plaintiffs' allegations, which must be taken as true, and instead credit Intervenor-Defendants' citation to one report in its motion. *See Pittman v. Sequa Corp.-Chromalloy*, No. 1:06-CV-2227-RLV-ECS, 2008 WL 11415862, at *1 (N.D. Ga.

May 28, 2008) ("[T]he Court may not grant a 12(b)(6) motion to dismiss on the basis of facts not contained within the Plaintiff's complaint."). Moreover, the RNC incorrectly suggests that Plaintiffs were required to allege that Georgians "are unable to use at least *one*" voting method after SB 202. Neither *Brnovich*, nor any other binding precedent, supports the RNC's position. Other available means of voting simply comprise one factor to be considered among the totality of circumstances under Section 2. *Brnovich*, 141 S. Ct. at 2339.

Fifth, the RNC urges this Court to prematurely resolve yet another factual dispute—"'the strength of the state interests'" in preventing voter fraud—based on nothing more than its assertions. MTD 13 (quoting *Brnovich*, 141 S. Ct. at 2339). Plaintiffs agree it is "important to consider the reason for the rule," *Brnovich*, 141 S. Ct. at 2340, but this is another factual circumstance that cannot be weighed at the pleadings stage. At a later juncture of this case, the RNC will have an opportunity to proffer their state interests in restricting voting access through SB 202. But given Plaintiffs' allegations that there are no colorable justifications for SB 202's restrictions, *see, e.g.*, FAC ¶¶ 91, 101, further evidentiary development is required to determine whether a state interest is legitimate or pretextual. On this motion to dismiss, the Court cannot accept the RNC's unsupported statements about the state

interests. It must decline the RNC's request to prematurely balance factors within the totality of circumstances.

2. Discriminatory Purpose (Counts I and II)

In *Brnovich*, the Supreme Court also upheld the district court's factual finding that the Arizona law at issue was not enacted with a discriminatory purpose in violation of Section 2 and the Fifteenth Amendment to the U.S. Constitution. *Brnovich*, 141 S.Ct. at 2348–50. In doing so, the *Brnovich* Court applied a clear error standard and gave substantial deference to the district court's evaluation of the evidentiary record. *Id.* The *Brnovich* Court did not supply additional guidance for assessing discriminatory purpose claims. Instead, it affirmed "the familiar approach outlined in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-268 (1977)." *Brnovich*, 141 S.Ct. at 2349.

This is the exact approach taken by Plaintiffs here; the First Amended Complaint alleges the *Arlington Heights* factors in detail. *See, e.g.*, FAC ¶¶ 73–79 (disproportionate impact on voters of color that was also known and reasonably foreseeable); *id.* ¶¶ 60–72 (Georgia's history of racially discriminatory voting restrictions); *id.* ¶¶ 1–2, 73–81 (events leading to SB 202's passage, including record election turnout by AAPI voters); *id.* ¶¶ 77–81 (opaque process leading to the enactment of SB 202); *id.* ¶ 76 (contemporary statements of legislators); *id.* ¶¶ 9–

10, 59–60, 91 (tenuousness of the proffered justifications). Under the well-established standard of reviewing a motion to dismiss, the Court must ignore the RNC's attempts to minimize or disregard Plaintiffs' allegations.

Brnovich does not affect Plaintiffs' claims—under Section 2 and the Fourteenth and Fifteenth Amendments—that SB 202 was enacted with a discriminatory purpose. The Court should decline Intervenor-Defendants' baseless request to resolve factual disputes or weigh competing factors at this stage.

IV. CONCLUSION

For the foregoing reasons, the Intervenors' Motion to Dismiss should be denied in its entirety.

Respectfully submitted this 26th day of July, 2021.

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CERTIFICATION OF COMPLIANCE

I hereby certify that the foregoing pleading has been prepared with Times New Roman font, 14 point, one of the font and point selections approved by the Court in L.R. 5.1C, N.D. Ga.

Dated: July 26, 2021

s/R. Adam Lauridsen
R. ADAM LAURIDSEN
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that on July 26, 2021, a true and correct copy of the foregoing PLAINTIFFS' RESPONSE IN OPPOSITION TO INTERVENOR-DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send notification of such filing to all attorneys of record.

Dated: July 26, 2021

s/R. Adam Lauridsen
R. ADAM LAURIDSEN
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